



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

JAMES E. DOYLE  
ATTORNEY GENERAL  
Burnetta L. Bridge  
Deputy Attorney General

Office of Consumer Protection  
123 West Washington Avenue  
P.O. Box 7856  
Madison, WI 53707-7856  
David J. Gilles  
Assistant Attorney General  
608/266-1792  
FAX 608/267-2778

October 10, 1994

RECEIVED

OCT 11 1994

FCC MAIL ROOM

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 220  
Washington, D.C. 20554

Re: CC Docket No. 93-22, Policies and Rules  
Implementing the Telephone Disclosure and  
Dispute Resolution Act

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed please find the original and ten copies of the  
Comments of the National Association of Attorneys General,  
Telecommunications Subcommittee, to be filed in the above matter.

Thank you for your consideration.

Sincerely,

David J. Gilles  
Assistant Attorney General

DJG:djk

Enclosures

No. of Copies rec'd 0-10  
List A B C D E

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

OCT 11 1994

In the Matter of )  
 )  
Policies and Rules Implementing )  
the Telephone Disclosure and )  
Dispute Resolution Act. )

FCC MAIL ROOM  
CC Docket No. 93-22

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL  
TELECOMMUNICATIONS SUBCOMMITTEE

The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General and the Attorneys General of the states of Arizona, Arkansas, California, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington and Wisconsin (hereinafter "the Attorneys General") submit these comments in response to the Federal Communication Commission's ("Commission") Order on Reconsideration and Further Notice of Proposed Rule Making regarding the Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act ("Pay-Per-Call Rules").

We welcome the Commission's proposal to revise provisions in the pay-per-call rules to prevent information service providers from using 800 numbers to circumvent existing rules and to violate the intent of the Telephone Disclosure and Dispute Resolution Act. Although the proposed modifications will strengthen the regulatory

framework to limit charges for unlawful information services, we urge the Commission to prohibit local and long distance carriers from billing customers for any call placed to an 800 number. We believe that by forbidding such billing practices and by implementing the safeguards described below, the Commission will be able to effectively stop continued abuse and confusion regarding 800 information services.

**UNLAWFUL 800 INFORMATION SERVICES ARE A SERIOUS PROBLEM.**

By enacting the Telephone Disclosure and Dispute Resolution Act ("TDDRA"), Congress intended to eliminate deceptive and abusive telemarketing practices and establish a basis for the growth of the legitimate pay-per-call industry. As a result, the Federal Trade Commission and this Commission designed a regulatory structure to implement these objectives. Unfortunately, unscrupulous operators are using 800 numbers to evade these regulations and charge consumers for illegal information services on their monthly telephone bills.<sup>1</sup>

By comparison with earlier telephone related consumer problems, the scope of this matter is unprecedented. The thousands of consumers who have filed complaints about charges for 800 number calls represent a small percentage of those affected by these

---

<sup>1</sup>Attorneys General are investigating and will pursue enforcement actions against operators of 800 information services who violate state and federal law. However, case by case law enforcement actions brought after the fraud has occurred are not a satisfactory solution. To the extent possible, the opportunity for fraudulent information services should be eliminated.

practices. Most consumers affected by an illegal practice do not report their experience to law enforcement officials. Undoubtedly, many telephone subscribers unknowingly have paid for unlawful 800 charges. Others have paid for disputed charges because they believed that their local phone service would be disconnected if payment was withheld. Although the scope of illegal 800 information service charges may never be known, it is likely that tens of millions of dollars have been charged to hundreds of thousands of telephone subscribers for unlawful services during this past year.<sup>2</sup>

The Commission should take into account the practices described in consumer complaints in evaluating whether the proposed rule changes will eliminate unlawful 800 information service practices. The complaints received by Attorneys General document four specific areas involving improper charges for 800 information services: unauthorized charges, deceptive advertising, misleading billing and international calls.

**Many 800 Information Charges Are Unauthorized.**

The majority of complaints pertain to adult entertainment information services billed without a valid presubscription agreement between the telephone subscriber and the information provider. 47 C.F.R. § 64.1501(b)(1). Frequently, charges appear on a phone bill after a single call to an 800 number in direct violation of 47 C.F.R. §§ 64.1501(b)(2) and 64.1504(a).

---

<sup>2</sup>Southwestern Bell recently reported that billings for 800 number calls were approximately \$3.5 million during May of 1994 and experienced "adjustment" rates ranging up to 40%.

Instead of billing individuals based upon an existing presubscription agreement, these providers use automatic number identification technology (ANI) to charge a telephone subscriber.<sup>3</sup> To feign compliance with the rules, some operators devise procedures that purport to establish a presubscription agreement. For example, one provider sent unsolicited post cards with the same personal identification number for hundreds of prospective customers to use for calling an 800 information service. Another operator's preamble merely instructed callers to stay on the line if they wanted entertainment services. These and other schemes are not valid presubscription agreements under the rule.

The use of an 800 access offers real advantages to unscrupulous providers. By using an 800 prefix, providers can evade 900 number blocking put in place by consumers and businesses to prevent unauthorized information charges or to protect children from unwanted sexual content. Advertisements for some adult services encourage customers to use telephones of employers or businesses which are unable to block calls to an 800 number.<sup>4</sup> Some businesses, such as hotels, are legally required to provide access to 800 number calls and are particularly vulnerable to these operations. Finally, 800 information service returns greater

---

<sup>3</sup>The use of ANI to establish a presubscription agreement for an information service accessed through an 800 number is not permitted under 47 C.F.R. § 64.1501(b)(1).

<sup>4</sup>See attachments 1 and 2 which were examples of advertisements used to promote adult entertainment service which encourages customers to "call from work & let your boss pay for it!"

profits to operators because it usually costs less than comparable 900 service.

**800 Information Services Are Inherently Deceptive.**

The use of an 800 number by information providers is especially pernicious because consumers have the expectation that 800 prefix calls are free. Both consumers and businesses rely on this established practice. As a result, some consumers have called 800 information services with the understanding that the calls were free. Many of the advertisements and commercials inviting consumers to call an 800 number do not comply with pay-per-call rule disclosure requirements. Other advertisements expressly represent these services as "toll-free." If information services for which consumers are charged remain accessible via 800 numbers, consumer confidence in toll-free access to commercial and other services will be diminished.

**Misleading Billings Are Used By 800  
Information Service Providers.**

Some operators deceptively bill for information service as a call to a number other than the 800 number which the caller dialed. Consumers' telephone bills identify these calls as credit card calls, directory assistance calls or toll calls to a geographic area code. Because the nature of the call is disguised, local exchange carriers do not segregate these charges. These fictitious billing statements mislead subscribers to pay for charges they did not incur.

### **Calls To 800 Numbers Are Switched To International Calls.**

Complaints about 800 numbers often involve unauthorized toll charges for calls to foreign countries for adult entertainment and other services. After calling an 800 number, some callers report being switched to an international number. In other instances, callers are led to believe that they are providing a personal identification number, when, in fact, they are dialing a foreign area code and telephone number. The charges for these calls greatly exceed domestic long distance rates and international rates set by facilities-based international carriers. Although these charges are subject to a tariff, nevertheless operators are able to obtain much more than the cost of transporting the call. Information operators contend that these services are not subject to pay-per-call rules because the rates are specified in an international tariff and information services are not obtained by placing a call to a 900 number.

Charges for international information services pose real problems for consumers. Because the calls are subject to a tariff, a consumer's local telephone service may be disconnected for nonpayment, even though the information provided is indistinguishable from 900 pay-per-call service.

### **RECOMMENDATIONS TO STRENGTHEN THE COMMISSION'S PROPOSAL TO PREVENT CHARGES FOR UNLAWFUL INFORMATION SERVICE.**

We support the Commission's proposed rule changes. The requirement that presubscription agreements be made with a legally competent individual and documented in writing should stop some of

the illegal practices reflected in the complaints.<sup>5</sup> The explicit recognition that pay-per-call rules are intended to protect telephone subscribers as well as callers is similarly important. Also, we support the Commission's proposal to segregate presubscription charges from regular telecommunications charges. Without separating these charges, unsuspecting subscribers still may be victimized by fraudulent operators.

We welcome the Commission's initiative, but believe that the pattern of consumer abuse requires stronger measures. We encourage the Commission to put in place the following recommendations to prevent unlawful practices and continued problems in the information service industry.

**Calls To 800 Numbers Should Be Toll-Free.  
Carriers Should Be Prohibited From Billing For 800 Calls.**

All carriers should be prohibited from including charges for calls to 800 numbers in monthly telephone bills sent to subscribers. The nature and overwhelming number of complaints regarding 800 information services indicate that written presubscription agreements will not provide sufficient protection

---

<sup>5</sup>Carriers that bill and collect for presubscription information services must have evidence of the existence of these agreements prior to billing. Billing and collection for non-telecommunications services are subject to different considerations than regular telecommunications service. By extending billing and collection services to information service providers, a telephone carrier functions more like a finance company and a collection agency than a common carrier of telecommunications service. Requiring carriers to have evidence that a presubscription agreement exists prior to billing for a charge to an 800 number is not unreasonable.

for telephone subscribers.<sup>6</sup> Both the public belief that calls to 800 numbers are toll-free and the capability to switch callers to other access numbers without a subscriber's authorization require this prohibition.

This recommendation is consistent with recent industry practice. Several major local exchange carriers now prohibit billing for calls to 800 numbers. However, telephone subscribers' vulnerability to unauthorized or fraudulent 800 charges should not depend on the policy of their local exchange carrier. Unless the Commission adopts this recommendation, the lack of uniformity will contribute to consumer confusion and will augment the potential for unlawful practices.

This recommendation would not unduly inhibit the growth of legitimate information services. Providers would be able to offer services via a 900 number and include charges in their customers' telephone bills. Providers would also be able to offer services via an 800 number and charge for such service by direct or third party billing based on a valid presubscription agreement, or through a credit card.

#### **Recommendations To Improve Protection For Presubscription Agreements.**

In order to insure that adequate presubscription agreements are in place before an 800 number may be used for information services, the Commission should consider additional measures to

---

<sup>6</sup>A reasonable basis exists to ban all charges for calls to 800 prefix numbers based on presubscription agreements. Fostered by years of industry advertising, the public perception is that 800 calls are toll-free without cost to the caller.

protect against unauthorized billings. Because of the public belief that 800 calls are toll-free, these additional safeguards are needed to make certain that only persons who agree in advance to pay for services are actually billed for calls to an 800 number.<sup>7</sup>

--Presubscription agreements documented in writing should be signed by the party to be billed. Without this requirement scam operators will find a way to "document in writing" an agreement which is unknown to the party being billed.

--Presubscription agreements should be mailed to the party to be billed. Although the Commission's proposal implies that consumers would receive a copy of a presubscription agreement, the rules should expressly obligate providers to send a copy to the party to be billed.

--Presubscription agreements should contain all the information which must appear in print advertisements about pay-per-call service. If presubscription agreements are documented in writing, the agreement should set forth additional information such as is required for print advertisements.

--Carriers should be prohibited from listing a destination number in a telephone bill in place of the number dialed by the consumer. There does not appear to be a legitimate basis to

---

<sup>7</sup>We emphasize that charges for calls to an 800 number should not appear in a telephone subscriber's monthly bill. However, we believe that further requirements regarding presubscription agreements are needed because these agreements could be the basis for charges accessed through 900 numbers in telephone bills or for billing procedures apart from a monthly telephone bill.

designate a number which was not dialed as the destination number in a telephone subscriber's bill.

--The definition of pay-per-call service should be revised and broadened to include information services accessed by telephone for which a charge is imposed in addition to the cost of the call.

There is no reason to differentiate information service provided via a 900 number from that obtained through a call to an 800 number or an international access prefix or some other access method. The definition's reference to a call to a 900 number and exclusion for calls which are subject to a tariff needlessly limits the scope of the protection afforded to consumers. All operators who hold themselves out in commercials and advertisements as information service providers should be subject to the rule's requirements.

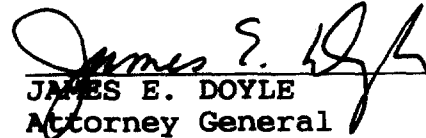
#### CONCLUSION

In view of past problems and the potential for continued deception, unauthorized charges and consumer confusion, we urge the Commission to implement the proposed rule with the additional safeguards we recommend. It is especially important that carriers be prohibited from charging for calls to 800 numbers. Without this prohibition, unscrupulous operators will continue to bilk telephone subscribers for unauthorized information services accessed by 800 numbers. If strong measures are not adopted, unlawful practices will continue to compromise the growth of the legitimate

information service industry and undermine the policies of federal and state laws intended to stop these practices.

Respectfully submitted,

/s/ ERNEST D. PREATE, JR.  
ERNEST D. PREATE, JR.  
Attorney General  
Commonwealth of Pennsylvania

  
JAMES E. DOYLE  
Attorney General  
State of Wisconsin

Co-Chairpersons  
Telecommunications Subcommittee  
Consumer Protection Committee  
National Association of Attorneys General

The following Attorneys General join in these comments:

GRANT WOODS  
Attorney General  
State of Arizona

WINSTON BRYANT  
Attorney General  
State of Arkansas

DANIEL E. LUNGREN  
Attorney General  
State of California

RICHARD BLUMENTHAL  
Attorney General  
State of Connecticut

ROBERT A. BUTTERWORTH  
Attorney General  
State of Florida

ROLAND W. BURRIS  
Attorney General  
State of Illinois

PAMELA CARTER  
Attorney General  
State of Indiana

BONNIE CAMPBELL  
Attorney General  
State of Iowa

ROBERT T. STEPHAN  
Attorney General  
State of Kansas

SCOTT HARSHBARGER  
Attorney General  
Commonwealth of Massachusetts

FRANK J. KELLEY  
Attorney General  
State of Michigan

HUBERT H. HUMPHREY, III  
Attorney General  
State of Minnesota

JEREMIAH W. (Jay) NIXON  
Attorney General  
State of Missouri

G. OLIVER KOPPELL  
Attorney General  
State of New York

FRANKIE SUE DEL PAPA  
Attorney General  
State of Nevada

LEE FISHER  
Attorney General  
State of Ohio

JEFFREY B. PINE  
Attorney General  
State of Rhode Island

JEFFREY AMESTOY  
Attorney General  
State of Vermont

MICHAEL F. EASLEY  
Attorney General  
North Carolina

THEODORE R. KULONGOSKI  
Attorney General  
State of Oregon

CHARLES W. BURSON  
Attorney General  
State of Tennessee

CHRISTINE O. GREGOIRE  
Attorney General  
State of Washington

10-4 70101



# Voice Mail Dating

## (800)747-4175

Directly from any phone, you can search for dates 24 hours daily or place a personal voice mail ad for yourself. There are several exciting features under option #4 to help you meet men or women in your area of choice:

- (1) According to the area code you select, you can scan voice mail greetings from other singles. Home phone numbers are often given in this unsensored greeting. You can also leave a response in their voice mail box for them to retrieve.
- (2) You can easily establish your personal voice mail box for others to hear and respond.



When you call 1-800-747-4175, you can charge the call to the phone bill of the phone you're using. Go ahead, call from work & let your boss pay for it! This is possible with a free calling card number you can obtain by calling 1-800-747-4175 & immediately pressing the star (\*) button. From the bill it isn't possible to tell who made the call & for what service.



All calls are from \$1.49-4.99/minute & can be charged to a Mastercard, Visa, or telephone bill via the free calling card number. Because this is extremely sexually explicit, you must be at least 18 years of age. If you're uninterested in this dating service, please pass it on. Also available:  
1-800-747-8040. Provided by Malibu Media.

"Hey sexy, you've just connected to the hottest phone line in America!"

$$\begin{array}{r} 200 \\ 15 \\ \hline \text{RG. 2} \\ \hline 9/15 \end{array}$$

9/5 restricted Vet  
house animal  
Truck

Who knows this # 7?